

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

ORDER

Sirajuddin Vs. 1. The CAT, Jodhpur]
2. Subhash Chandra
3. The UOI, through Director
AIR, New Delhi,
4. The Superintending
Engineer, Suratgarh, Distt.
Sri Ganganagar.

D.B. CIVIL WRIT PETITION NO.338/1999

“UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA.”

DATE OF ORDER :::: 09th JULY, 2007.

P R E S E N T

**HON'BLE THE ACTING CHIEF JUSTICE SHRI RAJESH BALIA
HON'BLE JUSTICE SHRI MAHESH CHANDRA SHARMA**

Mr.M.S.Singhvi for the petitioner.
Mr.L.R.Upadhyaya, P.P.

BY THE COURT:

This writ petition is directed against the order of the Central Administrative Tribunal dated 08.01.1999, by the non applicant No.3 before the Tribunal. The said application before the Tribunal has been moved by non-applicant No.2 in this writ petition.

In the facts and circumstances of the case in which this

petition has been filed may be noticed. The matter relates to recruitment of Diesel Technician at All India Radio, Suratgarh. The respondent No.2 is a member of Scheduled Caste and being eligible for the post and be considered along with other candidates for appointment as Diesel Technician, his name was sponsored by the Employment Exchange in response to requisition sought from the Employment Exchange.

The requisition to the Employment Exchange has been sent vide letter dated 10/15.09.1992 for four posts at FM Station Suratgarh for Diesel Technician. Only One of them was to be filled from General Category and three posts were reserved for the members of Scheduled Caste/Scheduled Tribes. The respondent No.2 was one of the candidate whose name has been sponsored in response to the said requisition.

The appointments in pursuance of the said requisition was given to non petitioners No. 5 to 7 only. One of them belonged to General Category and two belonged to Scheduled Caste. These appointments were made between 25th and 29th October, 1993 respectively and all the three candidates had joined. The respondent No.2 though empaneled at No.3 amongst the candidates belonging to reserved category.

After the three appointments were made one Sirajudin, the present petitioner was appointed as Diesel Technician vide order dated 03.11.1993. Sirajudin was one of the candidates empaneled at serial No.2 as a general candidate and his appointment was stated to be given against the vacancy that was caused due to transfer of Shri N.D.Purohit by order dated 28.09.1993 from Suratgarh Division to Churu and which was stated to be a post belonging to the General Category.

Aggrieved with the non-inclusion of his name amongst appointed candidates the respondent No.2 Subash Chander preferred the Original Application No. 354/1994.

The fact that the requisition was sent to Employment Exchange in the Year 1992 for four vacancies. One belonging to general category and three to reserved category of Schedule Caste and Schedule Tribes candidates was not in dispute. The fact that Subash Chander's name has sponsored through Employment Exchange and he was empaneled at Serial No.3 amongst the Schedule Caste candidate is also not in dispute.

However, the respondent Union of India has submitted reply before the Tribunal that due to abolition of number of posts of Diesel Technician in North Zone, there was a change of roster

point and as per instructions received from the office of Chief Engineer, North Zone the appointment were to be offered only to three candidates one in general category and two candidates in the reserved category according to the said roster. This fact has been reiterated vide letter dated 24.02.1994 emanating from the office of Chief Engineer Nagaur to Dy. Secretary, National Commission of Schedule Caste and Schedule Tribe, in response to the letter of commission dated 22.12.1993. The said letter stated that new posts of Diesel Technician were created at number of FM Stations. These posts were originally meant to be filled by promotion. But due to non availability of Diesel Engine Drivers, the decision was taken to fill those posts by direct recruitment.

The vacancy position on 26.08.1992 as had been stated to be four vacancies in the Suratgarh. In this context a letter further informs that newly created posts of Diesel Technician were abolished vide circular dated 20.08.1992 that is to say merely about 5 to 6 days before the letters were issued for filling the vacancy by direct recruitment. But due to abolition of posts many persons have become surplus and needed adjustment. With this premise it was stated as under :-

“This is regarding filling up the vacant post of Diesel Technician at FM station/AIR, in Rajasthan. I have assured you that the vacant post of Diesel Technician will be filled up by

promotion but I regret to inform you that due to non-availability of Diesel Engine Driver the vacant post could not be filled.

As per recruitment rules the post of Diesel Technician can be filled up by direct recruitment in case of non-availability of Diesel Engine Driver for promotion. Copy of recruitment rules is enclosed.

These post are required to be filled by you as given below. Out of these three posts are reserved for Sheduled Caste.

Barmer	-	One	Suratgarh
Four			
Churu	-	One	
Jhalawar	-	One	
Banswara	-	One	

I shall be extremely grateful if you kindly take immediate action for filling up the post by obtaining suitable nomination from Employment Exchange at these stations.

The Selection Committee will consist of a representative of CE [NZ] as Chairman, yourself and an officer from some other department of the rank of Deputy Director as member. Practical test will be conducted by your station Engineer.

I shall be extremely grateful if you kindly arrange to hold the interview during 3rd week of October, 1992."

This letter had been enclosed along with reply submitted before the Central Administrative Tribunal on behalf of Union of India.

The Tribunal having noticed this controversy about the actual existing number of vacancies to be filled as per the

requisition to employment exchange and the actual appointments offered in pursuance of the requisition sent to the Employment Exchange but did not decide this aspect of matter. It ultimately found that the appointment given to Sirajudin was a result of extending undue favour on the part of the respondents and their malafide is established and consequently appointment of Sirajudin was directed to be cancelled and applicant was directed to be appointed to the said post.

This led to filing of this petition by Sirajudin.

We have heard the learned counsel for the parties. It is contended by the learned counsel for the petitioner that there is no foundation of holding that through out the respondents were busy in conferring undue favour on Sirajudin and their malafide is established. No official have been joined as a party in personal capacity who might have supported or favoured the petitioner nor any particulars of such malice had been furnished. No inference of malice could have been inferred on the basis of material placed on record on the part of any officers involved in the matter of selection and appointments. It was also urged that notwithstanding there being a clear issue about the correct vacancy position, no finding was recorded nor any enquiry was directed towards the malafide of appointment given to Sirajudin

when even today there is no dispute about the fact that if real vacancy position was as stated by the respondents in their reply, the appointment could not have been offered to the respondent No.2 against the reserved vacancy.

Learned counsel for the respondent No.2 has vehemently urged that the Tribunal after considering the record, which was before it, had reached these findings which are supported by chronology of events. Particularly he referred to the letter dated 3.11.1993 Annex R-6 filed along with reply on behalf of Union of India coupled with the letter of appointment issued in favour of Sirajuddin on 3.11.1993 itself to buttress the argument that transfer of N.D.Purohit was only to make room for Sirajuddin. It was urged that because available vacancy was only for Schedule Caste, by not filling the same by giving appointment to respondent No.2, the appointment was offered to petitioner by calling it against the transfer of N.D.Purohit.

Apparently, the chronology of events emerging from the record does not support the conclusion about the malafide of the respondent Union of India or its officers in any sense of the term. The most of the facts alleged by the respondent No.2 in his application about the empanelment and his place in the panel had been admitted by the Union of India. The only contention

raised by the Union of India was about the reduction in the total number of vacancies available to be filled when the process of selection had started. Reason for such reduction in posts was stated to be the abolition of newly created posts by order dated 20.08.1992 that is to say a few days before requisition was sent to Employment Exchange for sponsoring names for the posts. The Tribunal has not at all addressed this question whether infact the total number of vacancy had been reduced to 3 or the vacancy position in the Suratgarh remain the same at 4 after abolition of post when the vacancies were filled. Significantly in letter dated 3.11.1993 [Annex.R/6] before the Tribunal reference has been made to letter dated 08.09.1993. No reference has been made to this letter by the Tribunal. We have directed in this regard the Union of India to place the relevant record for our perusal.

From that record photostat of letter date 08.09.93 has been placed before us along with that record itself. This letter also emanated from the Chief Engineer, North Zone, New Delhi informing that the Superintendent Engineer, AIR, Suratgarh which follows telephonic talk and through this letter he is informed that due to abolition of posts of Diesel Technician of many centers roster points have been altered, in Suratgarh Division one post has already been filled by transfer and three posts are vacant of which two posts are liable to be filled from the Reserved Category

of Scheduled Caste and were to be filled from the general category. It is also stated in the letter dated 08.09.1993 that only three posts in question were to be filled in total and one post is to be filled from general category and two from reserved category by offering the appointment to candidates empaneled at No.1 amongst the General Category candidates and two from reserved category candidates. The letter dated 3.11.1993 [Annex.R/6] shows that the date on which the transfer of Mr.N.D.Purohit was issued or sent is 28.09.93 almost three weeks after the Superintending Engineer was conveyed about the total number of available vacancies to be only three as against the original requisition for four vacancies. This goes to show that so far as the transfer of Mr.N.D.Purohit and the filling of post vacated by him had no relation to the filling of the posts through Employment Exchange. In the matter of selection and appointment being offered in pursuance to exercise to fill the four vacancies, if the factual position about existing vacancies in furtherance of letter dated 08.09.1993 continued to remain same as before, then the appointments were only offered to three persons and one vacancy remain unfilled. On the other hand if vacancy position has been altered to 3 from 4, as per letter dated 08.09.1993, then too it had no bearing on the post falling vacant as a result of transfer of Mr.N.D.Purohit because that vacancy fell after his transfer, on 08.09.1993 and such vacancy was to be

filled by a candidate of a same category to which the transferee belonged.

This letter dated 08.09.93 has been referred to in the letter dated 03.11.1993. Unequivocally up to 08.09.93 transfer of Mr.N.D.Purohit had not taken place. Hence until then no posting/appointment against filling of that post could take place as the same was not available to be filled. Hence vacancy arising due to transfer of Mr.N.D.Purohit could not have any relation with the communication of the vacancy position on 08.09.93 and their subsequent filling it out of the panel. The Tribunal apparently appears to have been carried away with the communication in the Year 1992 when vacancy position was shown to be four at Suratgarh at the FM Station and there is no specific order of revising the vacancy position.

The law is well settled that malice on the part of the official acting in discharge of their official duty is not to be easily inferred. Ordinarily the allegation of malafide must be specific against such officer and the officer concerned has to be impleaded as a party in person so that he may be able to explain the accusation of malice levelled against him. The malice in law too cannot be inferred merely from some discrepancy here and there. It is only when in no circumstances a person of ordinary

prudence can reach to the conclusion to which an officer discharging his function had reached and there is no existing material to support such conclusion, an inference of malice in law can be drawn. In the present case either situation does not exist to sustain the finding of malice in filling the vacancy by appointing Sirajuddin in place of Mr.N.D.Purohit. Ordinarily the vacancy is caused when somebody is transferred from one place to another, at such place post is vacated by such transferred employee. Such vacancy is in addition to existing vacancy in the department as such. It can be filled by bringing another man by transfer from other place. In given circumstances when enough incumbents are not available, the vacancy may be filled by other mode of recruitment. We are therefore, of the opinion that finding of about respondent Union Of India and its officers to have been motivated with malice to favour the petitioner cannot be sustained. To the said extent the order of the Tribunal deserves to be quashed. There being no issue about the qualification of the petitioner, it could not have been assumed on some report which might not have become final and copy of which has not been supplied to the candidate concerned to make such an adverse assumption about disqualification of petitioner, that too in the absence of person concerned.

However, the fact remains that Tribunal has not recorded

any finding about correctness or otherwise about vacancy position at Suratgarh FM Station since abolition of posts vide order dated 20.08.1992. We may notice that the letter dated 24.02.1994 communicated in response to the query raised from the National Commission for Scheduled Caste and Scheduled Tribes vide its letter dated 22.12.1993 with specific reference to change in roster point at Suratgarh AIR Station and also referred to the position taken by Superintending Engineer AIR Suratgarh that there is one post vacant due to transfer of Mr.N.D.Purohit and in pursuance of the altered roster as a result of abolition of newly created posts requiring adjustments of surplus employees due to abolition of posts. This also is corroborated from the letter dated 08.09.1993 which refer to filling of one post by transfer apparently. Things may be as it turns out that due to abolition of post at different places, persons were rendered surplus at some places resulting in their transfer to be absorbed on other posts. One such person has been transferred to Suratgarh from other place where he was rendering his services. With reference to letter dated 08.03.1993 other place where correctness of these facts have not been enquired into by the Tribunal.

Be that as it may, as far as basic right of the respondent No.2 is concerned, the same is to be considered against the available vacancy, if it really existed. However, there is no

dispute about appointments offered to other persons empaneled against the requisition sent in the Year 1992 and the transfer of N.D.Purohit causing a vacant post had no bearing on question about availability of one vacancy at the relevant time. If the vacancies were really 04 even according to the reply by Union of India, no approval has been granted against fourth vacancy. One vacancy must still exist. Hence the Tribunal has committed a patent error in not holding any enquiry about real number of existing vacancy at the relevant date and the roster point available.

As a result the petition is allowed. The order of Tribunal cancelling the appointment of petitioner Sirajudin is set aside. We deem it just and proper to remit the case back to the Tribunal to make an appropriate inquiry into the matter and reach at a definite finding about the vacancy position after abolition of posts under AIR Suratgarh Station when the appointments were offered to respondents Nos. 5 to 7. If it is found that the vacancy position remained the same as on that date when it was requisitioned in the Year 1992 then the respondent No. 2's matter will have to be considered against the vacant post. And if the vacancy is not there absolutely he cannot have any claim/right on the post, appointment to which had already been take place.

As a result, the petition is allowed. The order passed by the Tribunal cancelling appointment of Sirajudin and holding him disqualified is quashed. However, the matter is remitted back to the Tribunal as directed above. No orders as to costs.

(MAHESH CHANDRA SHARMA),J. (RAJESH BALIA)A. C.J.

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